

TITLE 8. CALIFORNIA CODE OF REGULATIONS
Division of Labor Standards Enforcement

NOTICE OF PROPOSED RULEMAKING

The Division of Labor Standards Enforcement (DLSE) proposes to adopt the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PUBLIC HEARINGS

DLSE has scheduled one public hearing on this proposed action:

San Francisco

Date: February 7, 2007

Time: 10:00 a.m.

Place: Hiram Johnson State Building, Auditorium

455 Golden Gate Avenue, San Francisco, CA 94102

Please note that public comment will begin promptly at 10:00 a.m. and will conclude at 12 noon or when the last speaker has finished his or her presentation, whichever occurs last.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. DLSE requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or authorized representative, may submit written comments to DLSE relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on February 7, 2007. All comments must be submitted in writing (by mail, fax, or e-mail) and received by that time by DLSE's Regulation Coordinator. Submit comments to:

Susie Smith, Regulation Coordinator
Division of Labor Standards Enforcement
Department of Industrial Relations
801 "K" Street, Suite 2100
Sacramento, CA 95814
E-mail: sesmith@dir.ca.gov
FAX (916) 322-1267

Proposed Regulatory Action

DLSE proposes to adopt Sections 13700 through 13706, Travel Expense Reimbursements, in Title 8 of the California Code of Regulations.

DLSE proposes to adopt Sections 13700 through 13706 to: 1) explain the requirements and specify the methods by which employers may reimburse employees for travel expenses necessarily incurred in connection with the use of personal vehicles for work, and overnight travel for work under Labor Code Sections 2802 and 2804; 2) define certain key terms to ensure that the content and meaning of the regulations are clearly understood by the regulated community; 3) clearly apprise employers and employees of what records must be kept and made readily available to DLSE for inspection and copying so that the state's wage and hour laws can efficiently and effectively be enforced; 4) inform employers of the potential consequences they may face for failing to provide the records or for providing falsified records; 5) ensure that the Legislature's intent that employees be indemnified for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties is carried out; and 6) establish the procedures for recovering unpaid travel reimbursement moneys and attorneys fees under Labor Code Section 2802(b) and (c).

Authority and Reference

Labor Code Sections 53, 54, 55, 59, 95(a), 96(a), 98(a), and 98.8 authorize DLSE to promulgate the proposed regulations, which will implement, interpret and make specific Labor Code Sections 2802 and 2804 as follows:

Labor Code Section 53 provides that the Director of the Department of Industrial Relations is the "head of the department" for purposes of Section 1001 and Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code, including the provisions on administrative rulemaking, except for those matters which are specifically committed to one of the divisions of the department.

Labor Code Section 54 authorizes the Director of the Department of Industrial Relations to perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided.

Labor Code Section 55 authorizes the Director of the Department of Industrial Relations, notwithstanding any provision in the Labor Code to the contrary, to require any division in the department to assist in the enforcement of any or all laws within the jurisdiction of the department. This Section also authorizes the Director to make rules and regulations that are reasonably necessary to carry out the provisions of the Labor Code relating to the Department of Industrial Relations and to effectuate its purposes.

Labor Code Section 59 mandates the Department of Industrial Relations, through its appropriate officers, to administer and enforce all laws imposing any duty, power, or function upon the offices or officers of the department.

Labor Code Section 95(a) authorizes DLSE to enforce the provisions of the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board or commission.

Labor Code Section 96(a) expressly authorizes the Labor Commissioner to accept and process claims for incidental expenses.

Labor Code Section 98(a) authorizes the Labor Commissioner to investigate employee complaints.

Labor Code Section 98.8 authorizes the Labor Commissioner to promulgate all regulations and rules of practice and procedure necessary to carry out the provisions of Chapter 4 of Division 1 of the Labor Code.

The above cited Labor Code Sections provide DLSE with the authority to interpret Labor Code Sections 2802 and 2804 for purposes of enforcing these statutes. Furthermore, in the 1996 California Supreme Court case of Tidewater Marine Western, Inc. v. Victoria L. Bradshaw (14 Cal. 4th 557, 569-70), the Supreme Court provided:

“The DLSE’s primary function is enforcement, not rulemaking...Nevertheless, recognizing that enforcement requires some interpretation and that these interpretations should be uniform and available to the public, the Legislature empowered the DLSE to promulgate necessary ‘regulations and rules of practice and procedure.’”

The finding in the Tidewater case confirms that DLSE has the authority to interpret Labor Code Sections 2802 and 2804 for purposes of interpreting these statutes for enforcement purposes.

Informative Digest/Policy Statement Overview

Existing statute provides that an employer is required to indemnify an employee for all necessary expenditures or losses incurred as a direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer as specified (Labor Code Section 2802).

Existing statute specifies that any contract or agreement, express or implied, made by an employee to waive these benefits is null and void (Labor Code Section 2804).

The proposed regulations would: 1) explain the requirements and specify the methods by which employers may reimburse employees for travel expenses necessarily incurred in connection with the use of personal vehicles for work, and overnight travel for work under Labor Code Sections 2802 and 2804; 2) define certain key terms to ensure that

the content and meaning of the regulations are clearly understood by the regulated community; 3) clearly apprise employers and employees of what records must be kept and made readily available to DLSE for inspection and copying so that the state's wage and hour laws can efficiently and effectively be enforced; 4) inform employers of the potential consequences they may face for failing to provide the records or for providing falsified records; 5) ensure that the Legislature's intent that employees be indemnified for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties is carried out; and 6) establish the procedures for recovering unpaid travel reimbursement moneys and attorneys fees under Labor Code Section 2802(b) and (c).

Disclosures Regarding the Proposed Action

Local Mandate Determination:

DLSE has determined that the proposed regulatory action does not impose any mandate on local agencies or school districts.

Costs on Local Agencies or School Districts:

DLSE has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. Furthermore, DLSE has determined that the proposed regulatory action does not impose costs on any local agency or school district which must be reimbursed in accordance with Government Code Section 17561.

Cost or Savings to State Agencies:

DLSE has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses:

DLSE has made an initial determination that adoption of these regulations will not have a significant statewide adverse economic impact on directly affected businesses, including the ability of California businesses to compete with businesses in other states.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code Section 11346.3(b)):

DLSE has made an initial determination that adoption of these regulations will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.

Effect on Small Business:

DLSE has determined that these proposed regulations will affect small businesses.

Cost Impacts on Representative Private Persons or Businesses:

DLSE has made an initial determination that the adoption of these regulations will not have a significant cost impact on representative private persons or businesses. Existing law (Labor Code Section 2802) requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequences of the discharge of his or her duties. These regulations merely specify the methods by which employers may reimburse their employees for travel expenses incurred in connection with the use of their personal vehicles for work and overnight travel for work, the records that must be kept, and other procedures.

Effect on Federal Funding to the State:

DLSE has determined that the proposed regulatory action results in no costs or savings in federal funding to the State.

Effect on Housing Costs:

DLSE has made an initial determination that the adoption of these regulations will have no significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

DLSE must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of DLSE, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action. DLSE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the hearings or during the written comment period.

CONTACT PERSONS

The text of the proposed regulations, the initial statement of reasons, and the modified text of the regulations, if any, may be accessed at DLSE's website (<http://www.dir.ca.gov/dlse>). For those without Internet access, requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Susie Smith, Regulation Coordinator
Division of Labor Standards Enforcement
Department of Industrial Relations
801 "K" Street, Suite 2100
Sacramento, CA 95814
Telephone: (916) 322-3157
FAX (916) 322-1267

In the event the contact person is unavailable, inquiries regarding the proposed regulatory action should be directed to the following backup contact person:

Anne Hipshman, Industrial Relations Counsel IV
Division of Labor Standards Enforcement
Department of Industrial Relations
455 Golden Gate Avenue, 9th Floor West
San Francisco, CA 94102
Telephone: (415) 703-4863
FAX (415) 703-4806

Inquiries concerning the substance of the proposed action may be directed to Susie Smith at the address and phone number specified above.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DLSE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its San Francisco headquarters office at 455 Golden Gate Avenue, 9th Floor West, San Francisco, CA 94102. A copy will also be available at 801 "K" Street, Suite 2100, Sacramento, CA 95814 as specified herein. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are also available on DLSE's website (<http://www.dir.ca.gov/dlse>). As of the date this notice is published in the Notice Register, the rulemaking file consists of: (1) this notice; (2) the proposed text of the regulations; (3) the initial statement of reasons; 4) Tidewater Marine Western, Inc. v. Victoria L. Bradshaw (14 Cal. 4th 557); 5) Internal Revenue Service Publication 463 Entertainment, Gift, and Car Expense; 6) Internal Revenue Service Publication 1542; 7)

DLSE Opinion Letter 1994.08.14; and 8) DLSE Opinion Letter 1998.11.05. Copies may be obtained by contacting Susie Smith at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearing and considering all timely and relevant comments received, DLSE may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DLSE adopts the regulations. Requests for copies of the modified regulations, if any, should be sent to the attention of Susie Smith at the address indicated above. DLSE will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code Section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on the DLSE's website (<http://www.dir.ca.gov/dlse>).